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IN THE

Supreme Court of the United States

October Term, 1940

No. 741

KLAXON COMPANY

Petitioner

against

STENTOR ELECTRIC MANUFACTURING COMPANY, INC.

Respondent

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

RESPONDENT'S BRIEF

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Supreme Court of the United States

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No. 741

KLAXON COMPANY,
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against
STENTOR ELECTRIC MANUFACTURING COMPANY, INC.,
Respondent.

RESPONDENT'S BRIEF

Statement

At p. 3 of the petitioner's brief, and again in the footnote at p. 18, it is said that the place of performance of the contract in suit was not considered an issue in the case until after the verdict was rendered.

The statement is not frank. The petitioner itself considered that the place of the making of the contract was in issue, and pleaded that it "was made in the State of New York" (Appellant's Appendix, p. 36). In the absence of further proof (and the petitioner offered none), this fixed New York law as the law of the contract.

Moreover, the respondent proved by evidence direct, to the point and again undisputed, that New York was the place of performance of the contract as well as the place of its making (*Stentor Electric Mfg. Co.* v. *Klaxon Co.*, 30 Fed. Supp. at 432; s. c., 115 Fed. (2d) at 276).

Since in the case at bar the place of the making of the contract and the place of performance were both New York, no issue is presented as to the distinction between *lex loci contractus* and *lex loci solutionis*. Moreover, inasmuch as the Conflict of Laws principle in respect of recovery of damages "is the same whether the right of action be *ex contractu* or *ex delicto*" (*Northern Pacific R. Co.* v. *Babcock*, 154 U. S. 190, 197), tort cases, which we cite from time to time in our argument, are entirely apposite. Hence we use *lex loci* herein in contradistinction to *lex fori*, as a convenient term to cover both *lex loci contractus* and *lex loci solutionis* in the case of contract, and *lex loci delictus* in the case of tort.

Summary of Argument

It is axiomatic in the field of Conflict of Laws that substantive matters are governed by the foreign law, and that procedural matters are governed by the law of the forum (3 Beale, *Conflict of Laws*, § 584.1, p. 1600; *Pritchard* v. *Norton*, 106 U. S. 124, 129-30). Petitioner does not contend otherwise, its argument being that Section 480 of the New York Civil Practice Act is not applicable because it is procedural.

But the Conflict of Laws rule of the State of Delaware is that the measure of damages for breach of contract, including interest, is a matter of substance and will be given effect in the courts of the forum according to the *lex loci*. This conflicts rule of the State of Delaware is binding on the Federal court sitting in that State, since the Federal courts have no common law Conflict of Laws independent of State law. It follows that the courts below were right, in conformity with Delaware law, to give effect to the New York statute by adding interest as prayed in the complaint (Appellant's Appendix, p. 22). This is the subject of our First Point, subds. I and II, at pp. 4-7, *infra*.

Since the Delaware conflicts rule governs this case, other authority would only be cumulative, if relevant at all. But even assuming, *arguendo* only, that the courts below could go to New York law of to some body of "federal general common law," the result would be the same; for under New York law the measure of damages and the right to interest are substantive, and the weight of authority elsewhere, both Federal and State, holds that these matters are referable to the *lex loci*. This, too, is considered in our First Point, subds. III and IV at pp. 7-12, *infra*.

Hence we argue, in our said First Point, that no matter by what law the question is tested the courts below were right to apply the New York statute in adding interest to the amount of the verdict herein.

Moreover, since the New York statute is held substantive by controlling New York decisions the courts below would, in any event, have been bound to apply that statute and add interest to the amount of the verdict herein, under the full faith and credit clause of the Federal Constitution. This is the subject of our Second Point at pp. 14-17, *infra*.

The decision of the courts below is entirely consonant with *Funkhouser* v. *J. B. Preston Co.*, 290 U. S. 163. This is the subject of our Third Point at pp. 17-21, *infra*.

In our final Point, at pp. 21-29, *infra*, we comment upon the arguments made and the authorities cited in the petitioner's brief herein.

Argument

FIRST POINT

No matter by what law the question is tested, the Courts below were right to apply the New York statute in adding interest to the amount of the verdict herein.

I. Under *Erie R. Co.* v. *Tompkins*, 304 U. S. 64, the Delaware Conflicts Rule Governs

In *Erie R. Co.* v. *Tompkins*, the law is laid down (304 U. S. at 78):

> "Except in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any case is the law of the State * * * There is no federal general common law."

In the *Tompkins* case this Court did not consider *how* the Conflict of Laws question was to be solved which arises in the case at bar, namely, whether the foreign law which is sought to be applied is substantive or procedural. The rule is (*Restatement, Conflict of Laws*, § 584; accord, 3 Beale, *Conflict of Laws*, § 584.2, p. 1601) that "The court at the forum determines according to its own Conflict of Laws rule whether a given question is one of substance or procedure." The doctrine of conflicts, however, is "purely a question of local common law" (*Kryger* v. *Wilson*, 242 U. S. 171, 176; *cf.* 1 Beale, *Conflict of Laws*, x, and § 5.1, p. 51). The *lex fori* therefore cannot be, as petitioner argues, some Federal "general law" independent of State law, and in so arguing the petitioner goes contrary to its own authorities, cited in its Point II, for those authorities uniformly show that the *lex fori* to which they refer is "the law of the state in which the district is located"

(Montgomery, *Federal Jurisdiction and Procedure,* quoted at p. 16 of the petitioner's brief). Hence the available authority holds that when this conflicts question is presented, the Federal court is bound to decide it according to the law of conflicts of the State in which it is sitting:

Sampson v. *Channell* (1st C. C. A.), 110 Fed. (2d) 754, 760-2, *cert.* denied 310 U. S. 650;
Waggaman v. *General Finance Co.* (3rd C. C. A.), 116 Fed. (2d) 254, 257;
A. B. v. *C. D.* (D. C. Penna.), 36 Fed. Supp. 85, 87;
Goodrich, *Conflict of Laws* (2d Ed.), p. 24;
Comment, 4 *Fed. Rules Service Cases* 1.3, Case 1.

Goodrich, *op. cit.*, sums up the matter as follows:

> "Thus [as a result of the Tompkins case] today the federal courts have no independent rules of common law and therefore Conflict of Laws, but must follow the rules established in the state courts of their district. The final result is proper and desirable; it prevents a difference in decision depending upon whether suit is brought in the state or federal courts, and one more possibility of divergence based upon the fortuitous event of the forum chosen has been abolished."

Were the law otherwise, then, as pointed out in *Sampson* v. *Channell, supra,* "the ghost of *Swift* v. *Tyson* [16 Pet. 1] still walks abroad, somewhat shrunken in size, yet capable of much mischief." Accordingly it was held in the above cases, as also in the case at bar, that since the *Tompkins* case the Federal courts must follow the Conflict of Laws rule of the State in which they sit.

II. The Delaware Conflicts Rule Makes the New York Interest Statute Applicable

The Delaware conflicts rule is that damages for breach of contract and the measure thereof are governed by the *lex loci*—in our case the law of New York:

> *Mackenzie* v. *Omar*, 4 W. W. Harr. [34 Del.] 435, 457, aff'd 4 W. W. Harr. [34 Del.] 460, 469; *Canadian Industrial Alcohol Company, Ltd.* v. *Nelson*, 8 W. W. Harr. [38 Del.] 26, 58.

In *Mackenzie* v. *Omar* the Court said (34 Del. at 457):

> "As we are considering a Texas contract, and the above rule as to the measure of damages applies in that state, we are bound by that rule, and it is unnecessary for us to consider the soundness of the principle upon which it is based. *Williams* v. *Beltz*, et al., 6 Boyce 554, 101 A. 905; Id., 7 Boyce 360, 107 A. 298; *Northern Pac. R. R. Co.* v. *Babcock*, 154 U. S. 190, 14 S. Ct. 978, 38 L. Ed. 958; *Sandham* v. *Grounds* (C. C. A.), 94 F. 83; *Atwood* v *Walker*, 179 Mass. 514, 61 N. E. 58; 17 C. J. 719."

In the most recent case on the subject, the *Canadian Industrial Alcohol Company* case, the Delaware Supreme Court wrote (38 Del. at 58) that "the obligation to pay damages for the non-performance of a contract is a matter of substantive right, imposed by the law as a substitute for performance, and should, therefore, be measured by the law of the place where such performance was promised. *Goodrich on the Conflict of Laws*, 183; *Wharton on the Conflict of Laws*, 928, 929."

Moreover, it has been held in Delaware that the rate of interest is governed by the *lex loci*:

> *Barstow* v. *Thatcher*, 3 Houst. [8 Del.] 32; *Mackenzie* v. *Omar, supra*, 4 W. W. Harr. [34 Del.] at 458-9, aff'd 4 W. W. Harr. [34 Del.] at 479-80.

Since, under the conflicts rule of Delaware, the measure of damages and the rate of interest are referable to the *lex loci*, then it follows that the right to interest as an element of damages is similarly governed. *Cf. Curtis* v. *Campbell* (3rd C. C. A.), 76 Fed. (2d) 84, *cert.* denied 295 U. S. 737; and see IV *infra*, pp. 9-12.[1]

III. The Same Result Would Have Been Reached If the Courts Below Had Gone Directly to the New York Law, Since the Measure of Damages and the Right to Interest Are Substantive Under New York Law

As shown above, the holding and the logic of the *Tompkins* case make the Delaware conflicts rule decisive here. If, contrary to our belief, the Federal court in Delaware might have looked to New York rather than Delaware law for the rule of its decision, the result would have been the same.

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[1] The assumption of the commentator in 4 *Fed. Rules Service Cases, supra,* that the Circuit Court of Appeals herein found for itself, without reference to the Delaware rule of conflicts, that *lex loci* governs, is erroneous. The assumption overlooks the fact that the opinion herein proceeds upon the rule set forth in §584 of the *Restatement* (115 Fed. (2d) at 276, and footnote 6 at that page), and that Judge GOODRICH, the author of the opinion, is also the authority for the proposition, quoted at p. 5 *supra,* that since the Tompkins case the Federal courts in conflicts matters "must follow the rules established in the state courts of their district." The assumption further overlooks the fact that MARIS and JONES, *JJ.*, who sat upon the case at bar, were also of the bench which decided the *Waggaman* case, *supra,* wherein the Court held, 116 Fed. (2d) at 257, that "In further effectuation of the policy of federal jurisprudence enunciated in Erie Railroad Co. *v.* Tompkins, 304 U. S. 64, it would seem proper for a federal court to follow the rule of the State of the forum on a question of conflict of laws." We note this point for accuracy's sake, though it is probably academic, since the Fed. Rules Service commentator himself points out:

> "The result, however, would have been the same had the court looked to Delaware law, since the Delaware courts have held that the measure of damages should be governed by the law of the place of performance of the contract, *Canadian Industrial Alcohol Co.* v. *Nelson,* 188 Atl. 39, 53 (Del. 1936, — Ed.)."

The rule is laid down as follows in *Dyke* v. *Erie Ry. Co.*, 45 N. Y. 113, 118:

> "The damages to which a party is entitled, upon the breach of a contract, or violation of a duty growing out of a contract, and the rule and measure of damages pertains to the right and not to the remedy. It is a matter of substance, and the principal thing sought, and not a mere incident to the remedy for the principal thing."

In *Kiefer* v. *Grand Trunk R. Co.*, 12 N. Y. App. Div. 28, aff'd 153 N. Y. 688, which was a death action for an accident occurring in Canada, there was a verdict for the plaintiff, and following the New York Code of Civil Procedure, the trial court added to the verdict interest from the date of the death, though the Canadian death statute did not allow such interest. The Appellate Division, recognizing that "in simple matters of procedure and detail, the *lex fori* may properly be invoked," fully considered the question whether the addition of interest "is to be regarded as an immaterial incident to the remedy only, or as a substantive right." It held that the sections of the New York Code of Civil Procedure "constitute a part of the substantive law of the State," and said, reversing the allowance of interest (12 N. Y. App. Div. at p. 32):

> "It follows, therefore, as we view the question, that inasmuch as the right to interest is inseparable from the right to damages, such right is as truly of the essence of the defendant's liability as is the sum specified in the statute."

Later recognition of the same rule appears in *Loucks* v. *Standard Oil Co.*, 224 N. Y. 99, 109, where the late Judge Cardozo wrote, referring to the *Kiefer* case, that it was there held "that interest had relation to the substance of the right;" and in *Preston Co.* v. *Funkhouser*, 261 N. Y. 140, 145, the Court again wrote that "The obliga-

tion of the contract includes interest." It goes without saying that there cannot be anything about a contract more substantive than its obligation. The classic distinction is between "the nature, *the obligation*, and the interpretation of a contract," all of which are of the substance (*Liverpool and Great Western Steam Co.* v. *Phenix Ins. Co.*, 129 U. S. 397, 458), and "procedural" matters—such, for example, as "the *form* of the action, as to whether it shall be assumpsit, covenant, or debt"; "all *process*, both mesne and final"; *pleadings;* and *"rules of evidence"* (*Pritchard* v. *Norton*, 106 U. S. 124, 133-5).

IV. The Delaware Conflicts Rule, That the Measure of Damages and Interest Are Substantive and Referable to the *Lex Loci*, is Supported by the Weight of Federal and Other Authority

Under the *Tompkins* case and the cases which follow it, the authorities to which we are about to refer are, as noted, at best cumulative, if relevant at all. The law of the State where the Federal court is sitting is decisive, and this remains true even if the Federal court disagrees with the State law (*West* v. *American Teleph. & Teleg. Co.*, 61 S. Ct. 336).

But the petitioner, wholly ignoring the Delaware and New York cases, argues that the question at bar is governed by Federal "general law," and that under such law the New York statute should not have been applied. The first half of the argument we have already refuted; we shall now show that the second half is equally bad. The great weight of authority, both Federal and State, holds that the measure of damages and the right to interest as part of the damages are substantive and governed by the *lex loci*.

On the measure of damages we cite, in addition to the cases cited by the District Court (30 Fed. Supp. at 432-4), the following:

"The measure of damages for a breach of contract is determined by the law of the place of performance." *Restatement, Conflict of Laws,* § 413.

"The personal cause of action for damages, as has been seen, arises upon the occurrence of a wrong, and at the place of a wrong. It must further be clear, upon reflection, that the measure of damages must be a part of the right to damages. The right to damages is not a general right to such damages as any court may choose to give; the right is a right to certain items of damage, a turning into money equivalent, according to some law, of the right infringed by the wrong. Its equivalence is as much part of the substantive right of recovery as any of its qualities. The law that creates the right creates also the measure of the right. 'The question of the proper measure of damages is insuperably connected with the right of action.'" 2 Beale, *Conflict of Laws,* § 412.1, p. 1332, the inside quotation being from *Chesapeake & Ohio Ry.* v. *Kelly,* 241 U. S. 485.

"The measure of damages for breach of contract is even more clearly settled in the United States to be determined by the law governing the contract, though whether this is to be the law of the place of contracting or the law of the place of performance is another question. As this is so clearly established, no useful purpose would be served here by examining the cases." Robertson, *Characterization in the Conflict of Laws* (Harvard Univ. Press, 1940) 270.[2]

On the right to interest as part of the damages the following Federal decisions hold that the *lex loci* governs:

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[2] Further authority that the measure of damages is substantive and referable to the *lex loci* will be found in the following: *Slater* v. *Mexican National Railway,* 194 U. S. 120, 126; *Lauria* v. *Dupont de Nemours,* 241 Fed. 687, 693; *Rauton* v. *Pullman Co.,* 183 So. Car. 495, 502; *Commonwealth Fuel Co.* v. *McNeil,* 103 Conn. 390, 405; *Tunks, Categorization and Federalism: "Substance" and "Procedure" After Erie Railroad* v. *Tompkins,* 34 Ill. L. Rev. 271, 276, n. 23; Note, *Conflict of Laws—What Law Governs the Measure of Damages,* 14 Minn. L. Rev. 665, 670; Note, *Law Governing the Measure of Damages for Breach of Contract,* 78 U. of Pa. L. Rev. 640, 641.

Freygang v. *Vera Cruz & P. R. Co.* (4th C. C. A.), 154 Fed. 640;
Wynne v. *McCarthy* (10th C. C. A.), 97 Fed. (2d) 964, 970;
U. S. v. *Garland*, 271 Fed. 14;
Cf. Curtis v. *Campbell*, *supra* (3rd C. C. A.), 76 Fed. (2d) 84.

Also to the same point is the holding of *Bell* v. *Lamborn* (4th C. C. A.), 2 Fed. (2d) 205, for although in that case the law of both States allowed interest, the holding of the Court was, nevertheless, that the *lex loci* governs.

The petitioner, at pp. 14-15, cites cases holding that the *rate* of interest is referable to the *lex fori*. But there is no issue in the case at bar with respect to the *rate* of interest as distinguished from the *right* to interest; New York and Delaware have the same legal rate, *i. e.*, six per cent. per annum (N. Y. Cons. L. [Cahill, 1930] Chap. 21, § 370, and Del. Rev. Code [1935] § 3101). In any event, the prevailing rule is that the *lex loci* governs:

Scudder v. *Union National Bank of Chicago*, 91 U. S. 406;
Pana v. *Bowler*, 107 U. S. 529, 546;
Scotland County v. *Hill*, 132 U. S. 107, 117;
Sloss-Sheffield Steel & Iron Co. v. *Tacony Iron Co.*, 183 Fed. 645, aff'd 188 Fed. 896;
91 *American State Reports*, 741;
Restatement, Conflict of Laws, § 418;
2 Beale, *Conflict of Laws*, § 418.1, p. 1335;
16 *Am. & Eng. Encyc. of Law* (2d Ed.), 1090;
Note, *Conflict of Laws—Interest as Damages—What Law Governs*, 25 Mich. L. Rev. 537, 538;
Note, *Law Governing the Measure of Damages for Breach of Contract*, 78 U. of Pa. L. Rev. 640, 644.

The rule, both as to the right to interest and the rate thereof, is stated as follows in the note in *American State Reports, supra*:

> "The result of the authorities above considered shows that by the weight of authority the law of the place where the liability has accrued, rather than that of the forum, determines whether interest is allowable as an element of damage, and, if so, at what rate it is to be computed. * * * The matter is not in any true sense one of remedy merely, and the *lex fori* is, it would seem, entirely inapplicable."

V. Sound Reason and Policy Support the Rule that the Right to Interest is Governed by the *Lex Loci*

Suppose, in the case at bar, Delaware were the State which by an enactment like Sec. 480 made interest mandatory as part of the damages, whereas New York did not allow such interest.

Then of course, if the courts below had held that interest is not of the substance and had applied such Delaware law, the petitioner would now be complaining that respondent had recovered not only its full contractual compensation, but an unconscionable increment over and above it; and there would be manifest justice in that complaint. "The injustice of imposing a greater liability than that created by the law governing the conduct of the parties at the time of the act or omission complained of is obvious." Holmes, *J.*, in *Western Un. Tel. Co.* v. *Brown*, 234 U. S. 542, 547; *cf. Slater* v. *Mexican Nat. Ry., supra*, 194 U. S. 120.

But so, equally, may the respondent complain, and with equal justice, that *its* rights should not be put at the hazard of the accident of where it was able to find the petitioner. *Curtis* v. *Campbell, supra*, 76 F. (2d) 84, 85.

Moreover, if Sec. 480 is procedural for conflicts purposes, then a defendant would be liable for interest if sued in New York upon a contract made and to be performed

in another State, though under the law of that State, the plaintiff would not be entitled to interest as part of his damages.

Such a result would be wholly irrational. It is well said in the *Restatement, Conflict of Laws*, p. 699:

> "One of the chief ends secured by a rational system of Conflict of Laws rules is that the rights and duties of parties arising from a legal situation shall not be substantially varied because of the forum in which an action is brought to settle disputed questions arising out of the situation. * * * For this reason when a case involving foreign elements is presented, the courts of all civilized states now decline the easy and obvious solution of ignoring foreign law and treating the case as a purely domestic one; instead, they seek, by reference to the foreign law deemed appropriate, to protect parties against a substantial change of position because of the fortuitous circumstance that suit is brought in that particular State."

SECOND POINT

Since the New York statute is held substantive by controlling New York decisions the Courts below would, in any event, have been bound to apply that statute and add interest to the amount of the verdict herein, under the full faith and credit clause of the Constitution.

The rule that the court at the forum determines according to its own conflicts rule whether a given question is one of substance or procedure is subject to a necessary constitutional exception. 15 *C. J. S.*, Article "*Conflict of Laws,*" § 22, p. 949:

> "It is within the competency of the court of the forum to determine what is a matter of procedure and what of substance, *with the limitation, however, that if a substantive foreign rule is embodied in a statute and the court of the forum erroneously decides that the point involved is procedural rather than substantive, thereby applying its own rule instead of the foreign statute, there is a denial of full faith and credit to the foreign statute.*"

A determination by the District Court of Delaware which refused to apply Sec. 480 of the Civil Practice Act in favor of the plaintiff would therefore have been a deprivation of the plaintiff's constitutional rights, as will be seen from the following:

A Federal court is bound equally with the courts of the State in which it sits to observe the command of the full faith and credit clause. *Bradford Elec. Co.* v. *Clapper*, 286 U. S. 145, 155.

A State statute declaring the substantive rights of parties to a contract of such State is a "public act" under

the full faith and credit clause. *John Hancock Ins. Co.* v. *Yates*, 299 U. S. 178, 183.

Section 480 of the Civil Practice Act is a statute which declares a substantive right of parties to a New York contract. Even before the amendment of Sec. 480 it had been held that the measure of damages and the right to interest were of the substance (*Dyke* v. *Erie Ry. Co., supra*, 45 N. Y. 113, 118; *Kiefer* v. *Grand Trunk R. Co., supra*, 12 N. Y. App. Div. 28, 32, aff'd 153 N. Y. 688), and the recovery of interest upon unliquidated claims such as the one at bar was by no means definitely foreclosed (*Prager* v. *N. J. Fidelity & Plate Glass Ins. Co.*, 245 N. Y. 1). The difficulty in respect of unliquidated claims was not as to the obligation to pay interest, for as noted, the Court of Appeals held in *Preston Co.* v. *Funkhouser*, 261 N. Y. at 145, that "The obligation of the contract includes interest." The difficulty was only one of enforcement; and therefore, as further said by Chief Justice POUND at the same place, the amendment to Sec. 480 "prevents an escape through procedural difficulties from the real obligation" (see also, *Cranford Co.* v. *City of New York* [2nd C. C. A.], 38 Fed. (2d) 52, 55). The amendment thus acted upon a substantive right, to-wit, the obligation of the contract; it accomplished its purpose by making mandatory the addition of interest to damages for breach of contract, "whether theretofore liquidated or unliquidated."

Stentor Electric Mfg. Co. v. *Klaxon Co., supra*, 30 Fed. Supp. at 432, and N. Y. cases there cited;
Preston Co. v. *Funkhouser*, 261 N. Y. 140;
Funkhouser v. *J. B. Preston Co.*, 290 U. S. 163.

The District Court herein has correctly summarized the New York cases referred to above, as follows:

"These cases hold the statute gives an absolute right as a matter of law to interest as a part of the

damages for breach of contract, whether the damages were liquidated or unliquidated. The addition of interest is mandatory. Interest is not required to be a part of the verdict but is computed and added by the court to the principal sum awarded by the verdict. In the absence of proof of a fixed date of breach, interest is computed and added from the date of commencement of the action."

The construction placed upon Sec. 480 by the New York courts, as exhibited in the foregoing cases, and the New York rule that the right to interest for breach of contract is a substantive right, are part of the statute, as much so as though they were found in appropriate words in its text:

Georgia Ry. & Elec. Co. v. *Decatur*, 295 U. S. 165, 170;
West v. *American Tel. & Tel. Co., supra*, 61 S. Ct. 336.

The statute as thus construed is a substantive provision of every New York contract to which it is applicable, such as the contract in the case at bar. The contractual rights established thereby are rights of property, enforceable wherever the contract is sued upon:

Loucks v. *Standard Oil Co.*, 224 N. Y. 99;
Curtis v. *Campbell, supra*, 76 F. (2d) 84.

To deprive a party of the benefit of such property right by refusing to give full faith and credit to the statute, would be a violation of the constitutional rights of such party:

Bradford Elec. Co. v. *Clapper, supra*, 286 U. S. 145;
John Hancock Ins. Co. v. *Yates, supra*, 299 U. S. 178;
Broderick v. *Rosner*, 294 U. S. 629;
Cf. Sampson v. *Channell, supra*, 110 F. (2d) 754, 759.

The petitioner recognizes the force of this argument, saying at pp. 19-20 of its brief that "if interest is substantive and governed by the *lex loci*, the District Court must, *as a matter of constitutional right*, give its rigid adherence to that law." The petitioner's suggestion that this Court shall avoid the constitutional issue by ticketing the right to interest as "procedural" and promulgating a Rule with respect thereto, is hardly feasible. The question of the nature of the right under applicable State law is not thus to be evaded; if the right is substantive, this Court is without power to promulgate a Rule of Procedure concerning it. *Sibbach* v. *Wilson & Company*, 61 S. Ct. 422.

THIRD POINT

The decision herein is entirely consonant with *Funkhouser* v. *J. B. Preston Co.*, 290 U. S. 163.

I. The Holding of this Court in *Funkhouser* v. *J. B. Preston Co.*

In the *Funkhouser* case, the constitutionality of Sec. 480 of the New York Civil Practice Act was being challenged on the ground that in its retroactive application it impaired the obligations of the contract between the parties.

This Court held that there was no impairment, because it was no part of the obligation of the contract that no interest should be allowed as damages for breach. The crux of the holding is in the statement, 290 U. S. at 168, that "when the action of the legislature is directed to the enforcement of *the obligations assumed by the parties* and to the giving of suitable relief for nonperformance, it cannot be said that the obligations of the

contract have been impaired." Therein this Court agreed with the New York Court of Appeals, 261 N. Y. at 145, that "The obligation of the contract includes interest," and that such obligation "was to pay interest in accordance with the rules of law existing when the case was tried."

II. The Different Meanings of "Substance" and "Procedure"

In the course of its discussion this Court referred to Sec. 480 as concerning the remedy and as having to do with "a matter of procedure," but the Court's language was used in relation to the constitutional issue only and not in relation to any conflicts issue. The Court was careful to point out that it was exercising a scrutiny, independent of State law, only because and for the purpose of the constitutional question involved. Said the present Chief Justice, 290 U. S. at 167, "While it is the duty of this Court, *where the contract clause is invoked,* to determine for itself what the contract is and whether it has been impaired (citing numerous cases), we find nothing requiring us to reach a conclusion different from that of the Court of Appeals." When this Court spoke of "procedure," it was only with reference to "*procedure within the range of due process in the enforcement of the contract.*"

To argue that because this Court, for purposes of the contract clause, regarded Section 480 as procedural, it follows that it is procedural for all purposes or for purposes of Conflict of Laws, is to overlook the recognized fact that the terms "substance" and "procedure" have different meanings depending upon the purpose at hand to be served by the classification, and that a classification for one purpose does not mean that the classification is valid for another purpose. *Sampson* v. *Channell, supra,* 110 Fed. (2d) at 756, 758, and note 11 at the latter page.

In the proposed Final Draft No. 2 of the *Restatement, Conflict of Laws*, published February 9, 1931 (Prof. Beale being the Reporter and Prof. Goodrich one of the Advisers), we read, at pp. 168-9:

> "The term 'procedure' has not always the same connotation. It is used, for instance, in Constitutional Law in a sense not quite the same as elsewhere in the law. * * * A statutory change in procedure may so affect substantial rights of the parties as to be unconstitutional under the Constitution of the United States."

The same point is made in the American Law Institute's volume of New York Annotations to the Restatement, Conflict of Laws, where we read at p. 352:

> "A problem frequently arising in the cases, but seldom discussed, is the relevancy of non-conflicts cases in the decision of the Conflict of Laws problem. It seems that the characterization of a certain matter as 'substance' or 'procedure' for a non-conflicts purpose, such as the determination of whether legislation is retroactive in operation, or whether the federal rule rather than the state rule shall be used, while perhaps entitled to some weight, should not be decisive of the Conflict of Laws question."

The author of *Categorization and Federalism: "Substance" and "Procedure" After Erie Railroad* v. *Tompkins*, 34 Ill. Law Review 277, points out that "many items waver from one category to the other [*i. e.*, from 'procedural' to 'substantive'] a fact best explained by reference to the purposes for which the classifications were made," and gives as an illustration the following precisely applicable example in a footnote at the same page:

> "One example is measure of damages: Goodrich, Conflicts (2d ed. 1938) 211 ('substantive' in conflicts),

Funkhouser v. *J. B. Preston Co. Inc.*, 290 U. S. 163 (1933) (retroactively permissible because 'procedural') * * *."

The difference of meanings and the necessity for caution has received the approval of this Court in *Central Vermont R. Co.* v. *White*, 238 U. S. 507, 511, where it is pointed out that "matters of substance and procedure must not be confounded because they happen to have the same name."[3]

It follows that in the *Funkhouser* case this Court did not hold Sec. 480 to be "procedural" for all purposes or for purposes of Conflict of Laws. On the contrary, the *rationale* of the holding compels the conclusion that for the conflicts purposes now presented, Sec. 480 is substan-

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[3] This same matter was dealt with by Prof. Cook in *"Substance" and "Procedure" in the Conflict of Laws*, 42 Yale Law Journal 332, where, speaking of the line between the two, he points out, p. 337:

> "If once we recognize that the 'line' can be drawn only in the light of the purpose in view, it can not be assumed without discussion that as our purposes change the line can be drawn at precisely the same point. To do this is to forget that a word is the 'skin of a living thought,' and that 'words [and the concepts for which the words stand]' are flexible, and should be defined so as best to meet our needs."

Subsequently in his article, pp. 341 *et seq.*, Prof. Cook cites the precise example of the difference between using the words "substance" and "procedure" in their constitutional applications and in other applications, including Conflict of Laws, and says, p. 343:

> "If we glance back over this list of purposes for which the distinction we are discussing is drawn, we see at once that a person asking where the line *ought* to be drawn might well conclude that this ought to be at one place for one purpose and at a somewhat different place for another purpose. * * * The precise meaning to be given to 'substance' and to 'procedure' ought, therefore, to be determined in the light of this underlying purpose to be fair to the individuals concerned."

Prof. Cook then points out that "If we turn to group 8, *i. e.*, the Conflict of Laws cases, we find a very different purpose" from that which applies in the constitutional field, so that the two words should be given different meanings accordingly.

tive, since the Court arrived at its holding upon the basis that Sec. 480 is a statute which implements a substantive right theretofore inhering in the contract, to-wit, a right going to and included in the obligation thereof.

Moreover, any argument that this Court in the *Funkhouser* case intended to hold Sec. 480 to be "procedural" for conflicts purposes would necessarily carry with it the corollary that a Federal court can invade the conflicts field, which is "purely a question of local common law" (*Kryger* v. *Wilson*, *supra*), and may substitute its own rule for the rule of the State in which it is sitting. Under *Erie R. Co.* v. *Tompkins*, as has been seen, this is forbidden to the Federal courts.

FOURTH POINT

The petitioner's brief exhibits no ground for reversal of the determinations below.

I. Answering Petitioner's Point I, pages 5-10

1. The petitioner's argument with respect to the *Funkhouser* case is fully dealt with in our Third Point, at pp. 17-21, *supra*.

2. The petitioner's argument based upon Sec. 1 of the New York Civil Practice Act involves two propositions: *first*, that everything contained in the Civil Practice Act is procedural; *second*, that the Civil Practice Act in its entirety applies solely to actions brought in the State courts of New York.

But the New York legislature has never hesitated to include substantive provisions in the Practice Acts of the State. Thus, as noted in *Kiefer* v. *Grand Trunk R. Co.*, *supra*, 12 N. Y. App. Div. at 32, the Code of Civil Pro-

cedure, which was the predecessor of the Civil Practice Act, contained "statutory provisions [which] constitute a part of the substantive law of the State." Similarly, substantive provisions are to be found in the Civil Practice Act. For example, Sec. 265 provides that in death actions "the contributory negligence of the person killed shall be a defense to be pleaded and proven by the defendant." Thereby the common-law rule, that the burden is on the plaintiff to plead and prove freedom from contributory negligence, has been reversed; yet it has been expressly held that this burden "is a substantive part of the plaintiff's right to recover" (*Fitzpatrick* v. *International Ry. Co.*, 252 N. Y. 127, 133-4). So again, by Sec. 61-b of the Civil Practice Act, the common-law rights of action theretofore existing "to recover sums of money as damage for the alienation of affections, criminal conversation, seduction, or breach of contract to marry are hereby abolished"; and it is elementary that a statute which destroys a common-law cause of action is substantive. Another illustration will be found in Secs. 211 and 211-a, which instead of destroying a cause of action create a new one, to-wit, a cause of action in favor of one of several joint tort feasors against the others of them for contribution. Prior to the enactment of Sec. 211-a, "it was the settled law of this State that one of two joint tort feasors, against whom a judgment had been recovered for a tort, could not upon paying the judgment maintain an action either in law or equity against the other tort feasor for contribution," and the section "was enacted to change the common-law rule and permit contribution" (*Ward* v. *Iroquois Gas Corp.*, 258 N. Y. 124, 127-8); and of Sec. 211 it has been held that it "relates to substantive matters which may determine the right to contribution and, relating to substantive rights, it governs those rights in whatever courts litigation to maintain them may be had" (*Wheatley* v. *Boyce*, 165 N. Y.

Misc. 512, 515). Other examples could be cited; thus Sec. 342 of the Civil Practice Act changes the common-law rule that a seal upon a contract is conclusive evidence of consideration, and further changes the common-law rule so as to make the rights and liabilities of an undisclosed principal under a sealed instrument the same as if the instrument had not been sealed. Both of these are of the substance; of the first of them, the question of consideration, it has been held that "whether arising upon the admissibility of evidence or presented as a point in pleading, [it] is not one of procedure and remedy. It goes to the substance of the right itself, and belongs to the constitution of the contract" (*Pritchard* v. *Norton, supra,* 106 U. S. at 135).

It is therefore clear that nothing in Sec. 1 of the New York Civil Practice Act determines whether any of the provisions of the Act are substantive or procedural. We have already shown, earlier in this brief, that under New York law interest is of the substance, and there is nothing in Sec. 480 which legislates to the contrary. The petitioner's argument amounts to saying that what was substantive prior to codification has been turned procedural by codification; and how far the petitioner must go to support its argument will be seen from the following:

In the case at bar, it happens that the allowance of interest was upon unliquidated damages. But Sec. 480 legislates with respect to interest upon liquidated as well as unliquidated damages, and the petitioner, in its argument that Sec. 480 is procedural, therefore properly draws no distinction between the two kinds of damages. If the petitioner is right, the respondent would have been disentitled to interest even though its recovery herein had been for liquidated damages; yet interest upon such damages (as well as upon many kinds of unliquidated damages) was recoverable in New York, as a matter of substantive right, long before the enactment of Sec. 480

(*Prager* v. *N. J. Fidelity & Plate Glass Ins. Co., supra*, 245 N. Y. 1).[4]

As to the further argument, that the provisions of the Civil Practice Act apply solely to actions brought in the State courts, the petitioner relies upon a stray sentence in *Matter of 1610 Avenue P, Inc.*, 168 N. Y. Misc. 918. The said sentence is the purest dictum. The case involved only the question whether the plaintiff in an action in the Federal Court for the Eastern District of New York could file a *lis pendens* in the office of the County Clerk of Kings County, which is in the Eastern District of New York. The case held only that Sec. 120 of the New York Civil Practice Act did not extend this procedural right to actions in another court. The matter before the Court was one of procedure exclusively, and the case did not hold and could not have held anything with respect to substantive rights.

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[4] There is confirmation in the Record herein that prior to suit the petitioner itself considered interest a part of the obligation of the contract, even though the contract is silent on the question of interest. In 1927 the respondent was pressing for overdue payments, and the matter was referred to Carroll, the attorney for the petitioner (Appellee's Appendix, 34-5). Writing to the petitioner, Carroll pointed out that "the attorneys for the Stentor Company are now threatening suit for breach of contract," admonished "that it is very necessary for us to meet our obligations under the contract," and continued (Plaintiff's Ex. 64, Appellee's Appendix, 211-12):

> "I have advised them [meaning the Stentor Company] it was proper for them to expect the payment of interest on overdue payments. I would accordingly thank you to compute interest upon the respective payments from the last quarter of 1925 to date."

The payments referred to in the above letter are amounts which were later paid and not the sums recovered in this action, or any part thereof. Nevertheless, as noted by Carroll, the failure to pay them would constitute a breach of the contract, and the respondent would be entitled to interest as compensation for such breach. There is no rational distinction to be found between those payments and the payments, to recover which was the purpose of the instant suit.

Indeed, the proposition that the Civil Practice Act in its entirety applies solely to actions in the State courts will come as a shock to bar and bench alike. Section 480 has been held to apply in suits in the Federal courts sitting in New York (*Cranford Co.* v. *City of New York, supra,* 38 Fed. (2d) 52, *cert.* denied 281 U. S. 760; *U. S.* v. *Stephanidis,* 41 Fed. (2d) 960). So again, it has been held that the New York statutes of limitations, contained in Secs. 10 to 61 of the Civil Practice Act, apply in the Federal courts sitting in New York (*Watkins* v. *Madison County Trust & Deposit Co.* [2nd C. C. A.], 24 Fed. (2d) 370, 371, *cert.* denied 277 U. S. 602; *McGrath* v. *Helena Rubinstein, Inc.* [D. C. N. Y.], 29 Fed. Supp. 822). In *Pieczonka* v. *Pullman Co.* (2nd C. C. A.), 102 Fed. (2d) 432, it was held that Sec. 265 of the Civil Practice Act, dealing with the defense of contributory negligence, applies in the Federal courts. In *Wawrzin* v. *Rosenberg* (D. C. N. Y.), 12 Fed. Supp. 548, and in *A. B.* v. *C. D.* (D. C. Penna.), 36 Fed. Supp. 85, it was held that the bar of Sec. 61-b of the Civil Practice Act against the causes of action specified therein will be enforced both in the Federal courts sitting in New York and in the Federal courts sitting in Pennsylvania. Upon the same principle, though in reverse application, it would be a startling proposition that one who has been given a cause of action for contribution by Sec. 211-a of the Civil Practice Act cannot enforce that cause of action in a Federal court sitting in New York or outside of New York; and such is not the law (*Dennick* v. *Central R. R. Co.,* 103 U. S. 11).

3. The case of *Fidelity-Phenix Ins. Co.* v. *Cortez Cigar Co.,* 92 F. (2d) 882, cited by the petitioner at pp. 9-10 of its brief, is wholly off the point. The statute there in suit was one of which the Court said that it "adds no incident to Florida insurance contracts," and that its "very

language * * * confines it to Florida and litigation in Florida." It was only a penalty statute, enacted to deter vexatious litigations of the particular category with which it deals, and was equally applicable to Florida and non-Florida contracts.

Kline Brothers v. *Royal Insurance Company,* 192 Fed. 378, cited at p. 10 of the petitioner's brief, is off the point at issue for the reasons stated above with respect to the *Fidelity-Phenix* case.

II. Answering Petitioner's Points II and III, pages 11-21

1. The heading of petitioner's Point II states that interest is deemed procedural "by the preponderance of authority," but the entire argument revolves around the assumption that the applicable authority is neither the Delaware law of conflicts, nor law of New York, but an assumed Federal "general law" which functions without regard to the law of either of those States.

But as we have pointed out earlier, the petitioner's own cases refute the said assumption. The law to which those cases refer is not Federal law, but "the law of the state in which the district is located" (Montgomery, *Federal Jurisdiction and Procedure,* quoted at p. 16 of the petitioner's brief).

To support this theory the petitioner recommends a fantastic result, stating in its Point III, at p. 21, that by relegating the matter of interest to Federal general law "an independent Federal rule regarding the allowance of interest may be promulgated either by Congress or by this Court, or by the 'Committee on Local District Court Rules', which has been appointed by the Judicial Conference." The petitioner is quite right that to reverse the decision in this case, the Court would have to go so far as to assume to itself the power to legislate for the several States with respect to the recovery of interest as

part of the damages for breach of contract, whether liquidated or unliquidated; so that, for example, even in a suit in a Federal court sitting in New York, upon a contract executed and to be performed in New York, the substantive law of New York would not apply. The theory is condemned by its consequences.

The petitioner purports to find precedent for its theory in *Board of Commissioners* v. *United States,* 308 U. S. 343, 349, 350. In that case, however, this Court pointed out that "whatever rule we fashion is ultimately attributable to the Constitution, treaties or statutes of the United States, and does not owe its authority to the lawmaking agencies of Kansas," and further pointed out that in working out the prohibition that a State "will not be allowed to invade the immunities of Indians • • • the federal courts [are not] restricted to the remedies available in state courts in enforcing such federal rights." In other words, the field was one which was reserved to the Federal Government by the Federal Constitution or by Acts of Congress, precisely as stated in *Erie R. Co.* v. *Tompkins;* and, indeed, Mr. Justice FRANKFURTER cited that case as authority for this Court's liberty of action.

In further support of its theory, the petitioner cites, at pp. 12-13, *Standard Oil Company* v. *United States,* 107 Fed. (2d) 402. This case is entirely inapposite, for two reasons. In the first place, it did not involve any conflicts question, and is no more authority upon that question than is the *Funkhouser* case. In the second place, the case did not involve any question at all of the right to damages for breach of contract. It was a tort case, and the precise point of the California cases upon which the Circuit Court of Appeals relied was that there was no vested right in "an arbitrary and statutory rule of damages in cases of *tort.*" The quotation is from *Tulley* v. *Tranor,* 53 Cal. 274, 280, cited by the Circuit Court of Appeals in 107 Fed. (2d) at 418; the emphasis on the word "tort" is the California court's.

Massachusetts Benefit Ass'n v. *Miles*, 137 U. S. 689, cited at p. 16 of the petitioner's brief, is wholly beside the point. That case was decided under § 966 of the Revised Statutes (28 U. S. C. A. § 811), having to do with interest on judgments. Interest on judgments comes under the general and elementary proposition that all courts have control over their own judgments and decrees; the question of such interest is in no wise comparable to the issue of interest as a part of the obligation of a contract, such as is presented by the case at bar.

2. The argument of inconvenience and delay, which is made at pp. 17-20 of the petitioner's brief, is untenable. In *Ruhlin* v. *New York L. Ins. Co.*, 304 U. S. 202, 209, this Court said

> "Application of the 'State law' to the present case, or any other controversy controlled by *Erie R. Co.* v. *Tompkins* does not present the disputants with duties difficult or strange. The parties and the federal courts must now search for and apply the entire body of substantive law governing an identical action in the state courts."

See, to the same effect, *West* v. *American Telephone & Telegraph Co., supra*, 61 S. Ct. 336.

3. The argument made at p. 20 of the petitioner's brief that a determination that interest is substantive may cast doubt upon the validity of certain of the Federal Rules of Procedure is without merit. None of the Rules to which petitioner refers deals with the matter of interest, and in view of the fact "that the new policy envisaged in the enabling act of 1934 was that the whole field of court procedure be regulated" (*Sibbach* v. *Wilson & Company*, 61 S. Ct. 422), the reasonable inference would be that interest was excluded precisely because that matter was deemed not to be within the field of power granted by the enabling act. In any event, if any of the Rules to

which petitioner refers do violate the enabling act, that matter will have to be dealt with as and when it arises. Such a possibility is irrelevant to the matter at bar.

CONCLUSION

The decision below was correct and should be affirmed.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

No. 741.—October Term, 1940.

Klaxon Company, Petitioner, vs. Stentor Electric Manufacturing Company, Inc., Respondent. } On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[June 2, 1941.]

Mr. Justice Reed delivered the opinion of the Court.

The principal question in this case is whether in diversity cases the federal courts must follow conflict of laws rules prevailing in the states in which they sit. We left this open in *Ruhlin* v. *New York Life Insurance Company*, 304 U. S. 202, 208, n. 2. The frequent recurrence of the problem, as well as the conflict of approach to the problem between the Third Circuit's opinion here and that of the First Circuit in *Sampson* v. *Channell*, 110 F. (2d) 754, 759-62, led us to grant certiorari.

In 1918 respondent, a New York corporation, transferred its entire business to petitioner, a Delaware corporation. Petitioner contracted to use its best efforts to further the manufacture and sale of certain patented devices covered by the agreement, and respondent was to have a share of petitioner's profits. The agreement was executed in New York, the assets were transferred there, and respondent began performance there although later it moved its operations to other states. Respondent was voluntarily dissolved under New York law in 1919. Ten years later it instituted this action in the United States District Court for the District of Delaware, alleging that petitioner had failed to perform its agreement to use its best efforts. Jurisdiction rested on diversity of citizenship. In 1939 respondent recovered a jury verdict of $100,000, upon which judgment was entered. Respondent then moved to correct the judgment by adding interest at the rate of six percent from June 1, 1929, the date the action had been brought. The basis of the motion was the provision in section 480 of the New York Civil Practice Act directing that in contract actions interest be added to the principal sum

"whether theretofore liquidated or unliquidated."[1] The District Court granted the motion, taking the view that the rights of the parties were governed by New York law and that under New York law the addition of such interest was mandatory. 30 F. Supp. 425, 431. The Circuit Court of Appeals affirmed, 115 F. (2d) 268, and we granted certiorari, limited to the question whether section 480 of the New York Civil Practice Act is applicable to an action in the federal court in Delaware. 312 U. S. —.

The Circuit Court of Appeals was of the view that under New York law the right to interest before verdict under section 480 went to the substance of the obligation, and that proper construction of the contract in suit fixed New York as the place of performance. It then concluded that section 480 was applicable to the case because "it is clear by what we think is undoubtedly the better view of the law that the rules for ascertaining the measure of damages are not a matter of procedure at all, but are matters of substance which should be settled by reference to the law of the appropriate state according to the type of case being tried in the forum. The measure of damages for breach of a contract is determined by the law of the place of performance; Restatement, Conflict of Laws § 413." The court referred also to section 418 of the Restatement, which makes interest part of the damages to be determined by the law of the place of performance. Application of the New York statute apparently followed from the court's independent determination of the "better view" without regard to Delaware law, for no Delaware decision or statute was cited or discussed.

We are of opinion that the prohibition declared in *Erie Railroad* v. *Tompkins*, 304 U. S. 64, against such independent determinations by the federal courts extends to the field of conflict of laws. The conflict of laws rules to be applied by the federal court in Dela-

[1] Section 480, New York Civil Practice Act:

"Interest to be included in recovery. Where in any action, except as provided in section four hundred eighty-a, final judgment is rendered for a sum of money awarded by a verdict, report or decision, interest upon the total amount awarded, from the time when the verdict was rendered or the report or decision was made to the time of entering judgment, must be computed by the clerk, added to the total amount awarded, and included in the amount of the judgment. In every action wherein any sum of money shall be awarded by verdict, report or decision upon a cause of action for the enforcement of or based upon breach of performance of a contract, express or implied, interest shall be recovered upon the principal sum whether theretofore liquidated or unliquidated and shall be added to and be a part of the total sum awarded."

ware must conform to those prevailing in Delaware's state courts.[2] Otherwise the accident of diversity of citizenship would constantly disturb equal administration of justice in coordinate state and federal courts sitting side by side. See *Erie Railroad* v. *Tompkins*, *supra*, at 74-77. Any other ruling would do violence to the principle of uniformity within a state upon which the *Tompkins* decision is based. Whatever lack of uniformity this may produce between federal courts in different states is attributable to our federal system, which leaves to a state, within the limits permitted by the Constitution, the right to pursue local policies diverging from those of its neighbors. It is not for the federal courts to thwart such local policies by enforcing an independent "general law" of conflict of laws. Subject only to review by this Court on any federal question that may arise, Delaware is free to determine whether a given matter is to be governed by the law of the forum or some other law. Cf. *Milwaukee County* v. *White Co.*, 296 U. S. 268, 272. This Court's views are not the decisive factor in determining the applicable conflicts rule. Cf. *Funkhouser* v. *J. B. Preston Co.*, 290 U. S. 163. And the proper function of the Delaware federal court is to ascertain what the state law is, not what it ought to be.

Besides these general considerations, the traditional treatment of interest in diversity cases brought in the federal courts points to the same conclusion. Section 966 of the Revised Statutes, 28 U. S. C. § 811, relating to interest on judgments, provides that it be calculated from the date of judgment at such rate as is allowed by law on judgments recovered in the courts of the state in which the court is held. In *Massachusetts Benefit Association* v. *Miles*, 137 U. S. 689, this Court held that section 966 did not exclude the allowance of interest on verdicts as well as judgments, and the opinion observed that "the courts of the state and the federal courts sitting within the state should be in harmony upon this point" (p. 691).

Looking then to the Delaware cases, petitioner relies on one group to support his contention that the Delaware state courts would refuse to apply section 480 of the New York Civil Practice Act,

[2] An opinion in Sampson v. Channell, 110 F. (2d) 754, 759-62, reaches the same conclusion, as does an opinion of the Third Circuit handed down subsequent to the case at bar, Waggaman v. General Finance Co., 116 F. (2d) 254, 257. See also Goodrich, Conflict of Laws, § 12.

and respondent on another to prove the contrary. We make no analysis of these Delaware decisions, but leave this for the Circuit Court of Appeals when the case is remanded.

Respondent makes the further argument that the judgment must be affirmed because, under the full faith and credit clause of the Constitution, the state courts of Delaware would be obliged to give effect to the New York statute. The argument rests mainly on the decision of this Court in *John Hancock Mutual Life Insurance Company* v. *Yates*, 299 U. S. 178, where a New York statute was held such an integral part of a contract of insurance that Georgia was compelled to sustain the contract under the full faith and credit clause. Here, however, section 480 of the New York Civil Practice Act is in no way related to the validity of the contract in suit, but merely to an incidental item of damages, interest, with respect to which courts at the forum have commonly been free to apply their own or some other law as they see fit. Nothing in the Constitution ensures unlimited extraterritorial recognition of all statutes or of any statute under all circumstances. *Pacific Employers Insurance Co.* v. *Industrial Accident Comm.*, 306 U. S. 493; *Kryger* v. *Wilson*, 242 U. S. 171. The full faith and credit clause does not go so far as to compel Delaware to apply section 480 if such application would interfere with its local policy.

Accordingly, the judgment is reversed and the case remanded to the Circuit Court of Appeals for decision in conformity with the law of Delaware.

A true copy.

Test:

Clerk, Supreme Court, U. S.